

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Berkshire Telephone Corporation, Big)	WC Docket No. 12-71
Sandy Telecom, Inc., Bluestem Telephone)	
Company, Chautauqua and Erie)	
Telephone Corporation, Chouteau)	
Telephone Company, Columbine Telecom)	
Company, C-R Telephone Company, The)	
El Paso Telephone Company, Ellensburg)	
Telephone Company, FairPoint)	
Communications Missouri, Inc., Fremont)	
Telcom Co., The Germantown Independent)	
Telephone Company, GTC, Inc., Marianna)	
and Scenery Hill Telephone Company,)	
Odin Telephone Exchange, Inc., The)	
Orwell Telephone Company, Peoples)	
Mutual Telephone Company, Sunflower)	
Telephone Company, Inc., Taconic)	
Telephone Corp., YCOM Networks, Inc.)	
)	
Petition for Conversion to Price Cap)	
Regulation and for Limited Waiver Relief)	

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its Comments in response to the April 2, 2012 Public Notice issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ The Public Notice seeks comment on the petition of the FairPoint Petitioning LECs² seeking

¹ *Wireline Competition Bureau Seeks Comment on the Petition of the FairPoint Cost Companies for Conversion of their Special Access Services to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 12-71, DA 12-525 (rel. Apr. 2, 2012) (“Public Notice”).

² The FairPoint Petitioning LECs are Berkshire Telephone Corporation, Big Sandy Telecom, Inc., Bluestem Telephone, Chautauqua Telephone Corporation, Chouteau Telephone Company, Columbine Telephone Company, C-R Telephone Company, The El Paso Telephone Company,

approval to convert their special access services to price cap regulation and for limited waiver relief.³ ITTA supports the *FairPoint Petition* and urges the Commission to expeditiously grant the requested relief.

I. THERE IS GOOD CAUSE FOR GRANTING THE RELIEF REQUESTED BY THE PETITION

The FairPoint Petitioning LECs are rate-of-return regulated local exchange carrier (“LEC”) subsidiaries of FairPoint Communications, Inc. (“FairPoint”). The *Petition* requests that they be permitted to convert their special access services from rate-of-return regulation to price cap regulation while remaining subject to the schedule applicable to rate-of-return carriers for transitioning their intercarrier compensation rates to bill-and-keep. The *Petition* also asks that they be permitted to effectuate the rate-of-return to price cap conversion on or before January 1, 2013.⁴ ITTA believes there is good cause to grant the petition and the corresponding limited waivers requested by the FairPoint Petitioning LECs.

a. The Conversion of Special Access Services to Price Cap Regulation

FairPoint is in a unique situation. It is the only price cap incumbent local exchange carrier (“ILEC”) in the country with rate-of-return affiliates that settle on a cost basis.⁵ Prior to

Ellensburg Telephone Company, FairPoint Communications of Missouri, Inc., Fremont Telcom Co., The Germantown Independent Telephone Company, GTC, Inc., Marianna and Scenery Hill Telephone Company, Odin Telephone Exchange, Inc., The Orwell Telephone Company, Peoples Mutual Telephone Company, Sunflower Telephone Company, Inc., Taconic Telephone Corp., and YCOM Networks, Inc.

³ See Berkshire Telephone Corporation, *et al.*, Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 12-71 (filed Mar. 5, 2012) (“*FairPoint Petition*”).

⁴ *FairPoint Petition* at 2.

⁵ *Id.* at 3.

adoption of the *USF/ICC Transformation Order*,⁶ the switched access offerings of these affiliates – i.e., the FairPoint Petitioning LECs – were governed on the basis of cost studies pursuant to Parts 32, 36 and 69 of the Commission’s rules. Going forward, however, their switched access services are no longer governed by rate-of-return regulation. Under the *USF/ICC Transformation Order*, their interstate switched access revenues are subject to the intercarrier compensation transition plan for rate-of-return carriers and their interstate common line operations fall under the new Connect America Fund (“CAF”) rules for price cap carriers.⁷ As a result of these rule changes, approximately 80% of FairPoint’s interstate rate-of-return revenues are no longer subject to rate-of-return regulation.⁸ Only the special access services of the FairPoint Petitioning LECs remain under rate-of-return regulation.⁹

As a consequence of the involuntary conversion of 80% of their interstate operations away from rate-of-return regulation, the FairPoint Petitioning LECs find themselves in the situation of being obligated to continue to perform cost studies – at an estimated annual cost of \$750,000 – in order to support a small fraction of their annual interstate revenue requirements.¹⁰ They also must continue to incur the expenses associated with the USAC audits, NECA pooling

⁶ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, at ¶ 145 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

⁷ *USF/ICC Transformation Order* at ¶¶ 129, 801.

⁸ *FairPoint Petition* at 4, 10.

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

and other compliance obligations that continue to apply to their special access services.¹¹ The resource burden this represents for a modestly-sized, primarily rural carrier like FairPoint is significant.

The request to be permitted to convert the FairPoint Petitioning LECs' special access services to price cap regulation would ease a significant resource and financial burden on FairPoint and streamline its regulatory obligations. Importantly, it also is consistent with the Commission's preference for price cap regulation. The Commission has expressed its preference for price cap regulation in a number of proceedings, stating its belief that price cap regulation provides incentives for carriers to maintain and enhance efficient operations.¹² Indeed, in recent years the Commission has granted several carriers permission to convert from rate-of-return regulation to price cap regulation.¹³ The relief requested by FairPoint would further the Commission's stated policy preference. The *Petition* therefore should be resolved consistent with previous rate-of-return to price cap conversion requests.

b. Continued Application of the Nine-Year Intercarrier Compensation Transition Plan

As noted above, although the *USF/ICC Transformation Order* treats rate-of-return carriers affiliated with price cap carriers like price cap carriers for purposes of determining high-cost support from the CAF, it does not treat rate-of-return carriers affiliated with price cap carriers like price cap carriers with respect to access charge reform. The nine-year transition to bill-and-keep applicable to rate-of-return carriers, and not the six-year transition applicable to

¹¹ *Id.*

¹² See, e.g., *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 21 (1990); *USF/ICC Transformation Order* at ¶ 814.

¹³ *FairPoint Petition* at n.10.

price cap carriers, applies to price cap-affiliated rate-of-return carriers.¹⁴ The longer transition period is designed to “moderate potential adverse effects on consumers and carriers of moving too quickly from the existing intercarrier compensation regimes.”¹⁵

There is good reason to continue to apply the more moderate nine-year transition period to FairPoint after it converts its special access services to price cap regulation. The basis for the nine-year transition afforded the FairPoint Petitioning LECs and other rate-of-return carriers – i.e., to allow sufficient time for these smaller, predominantly rural carriers to adjust their operations to respond to marketplace changes – will remain important after the conversion. As FairPoint has stated, accelerating the transition to six years “would result in significant loss of critical revenue at a time when these companies will already be struggling to serve particularly rural and high-cost areas while adapting to a new universal service and ICC regime that will limit their financial resources.”¹⁶ Moreover, FairPoint is uniquely situated as the only price cap carrier whose rate-of-return affiliates settle on a cost basis. Thus, it is the only carrier that would experience significant losses should it be required to accelerate the intercarrier compensation transition for its rate-of-return affiliates. There are no legitimate countervailing considerations that would dictate application of the shorter six-year transition period to the FairPoint Petitioning LECs.

II. CONCLUSION

For all of the foregoing reasons, the Commission should permit the FairPoint Petitioning LECs to adopt price cap regulation for their interstate access services while remaining on the

¹⁴ *USF/ICC Transformation Order* at ¶ 801.

¹⁵ *Id.*

¹⁶ *FairPoint Petition* at 19.

existing rate-of-return schedule for transitioning their special access rates to the bill-and-keep regime.

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
gmorelli@itta.us
mcaldwell@itta.us

May 2, 2012